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# Status and role of cooperatives in the light of new economic and social trends

## Report of the Secretary-General

Contents


| | | Paragraphs | Page |
|---|---|---|---|
| I. | Introduction | 1–4 | 2 |
| II. | Legislation governing cooperatives | 5–10 | 2 |
| III. | Legislative and administrative initiatives taken in Western Europe, North America and Japan | 11–25 | 3 |
| | A. Legal and administrative framework for cooperatives | 11–19 | 3 |
| | B. Initiatives taken in the 1990s | 20–25 | 5 |
| IV. | Legislative and administrative initiatives taken in countries in transition | 26–33 | 7 |
| V. | Legislative and administrative initiatives taken in Africa, Asia and Latin America | 34–52 | 9 |
| | A. Legal and administrative framework for cooperatives | 34–43 | 9 |
| | B. Initiatives taken in the 1990s | 44–52 | 11 |
| VI. | Participation of the cooperative sector in reforming cooperative legislation | 53–55 | 13 |
| VII. | Attitude to elaborating United Nations guidelines for the development of cooperatives | 56–61 | 13 |
| Annex | | | |
| | Draft guidelines aimed at creating a supportive environment for the development of cooperatives | | 15 |


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# I. Introduction

1. In its resolution 51/58 of 12 December 1996, the General Assembly encouraged Governments to keep the legal and administrative provisions governing the activities of cooperatives under review with a view to ensuring a supportive environment for cooperatives, so that they can make an appropriate contribution to the attainment of the goals of national development, including that of meeting the basic human needs of all.

2. In the same resolution, the General Assembly requested the Secretary-General to submit to the General Assembly at its fifty-fourth session, through the Commission for Social Development, a report containing, *inter alia*, information on legislative and administrative initiatives taken by countries. The Secretary-General was also requested to ascertain, in cooperation with the Committee for the Promotion and Advancement of Cooperatives,[1] the desirability and feasibility of elaborating United Nations guidelines aimed at creating a supportive environment for the development of cooperatives and to include the findings and recommendations in that same report.

3. In response to the Secretary-General's questionnaire to Governments, replies from 38 governmental agencies in 35 countries were received as at the end of November 1998.[2] The Secretary-General's questionnaire was also transmitted to national cooperative organizations, 56 of which replied.[3] In preparing the present report, the Secretary-General thus had available information from 94 governmental agencies and national cooperative organizations in 65 countries.

4. In pursuance of the General Assembly's request in its resolution 51/58 to collaborate with the Committee for the Promotion and Advancement of Cooperatives, the Secretary-General availed himself of the advantages offered by United Nations membership on the Committee to benefit from (a) the database maintained by the Committee and its constituent members, and (b) the discussions at the Committee's fifty-sixth meeting, in November 1996, its fifty-eighth meeting, in October 1998, and at its consultative meeting of cooperative experts on the subject of the elaboration of United Nations guidelines aimed at cooperative development in May 1997.

# II. Legislation governing cooperatives

5. Legislation and other rules and regulations governing cooperative societies can be found in international conventions and standards, in national constitutions and laws, in subsidiary legislation and in by-laws. Even in the absence of explicit legislation, cooperatives are generally covered by the basic human rights guaranteed under national constitutions and are understood to form part of cooperative values. Such rights include: freedom of association, protection of private property, freedom to exercise any lawful profession, freedom to form coalitions, the human right to development, basic democratic rights and free access to the courts. Cooperative principles such as voluntary membership, democratic management and control, autonomy in goal-setting and decision-making are expressions of these basic human rights. The climate for cooperative development is favourable where basic human rights are guaranteed.

6. National constitutions can stipulate the role of cooperatives in society and in national economies (in local government, in land reform, etc.). Many Governments consider cooperatives to be a particular type of business organization or corporation operating in the market, subject to specific cooperative laws in the form of one law covering all types and forms of cooperatives or separate laws for different types and branches of cooperatives. Provisions governing cooperative societies can be found in specific chapters of more general codifications (such as the civil code, the commercial code, the labour code, the rural code); in special provisions governing the application of general organization law to cooperatives (such as the Industrial and Provident Societies Act in the United Kingdom); in competition law (the Capper-Volstead Act in the United States of America); or in taxation law. A number of countries do not have any special cooperative legislation and cooperatives are subject to general laws such as tax law, competition law, labour law and land law governing all business organizations. The cooperators choose the appropriate legal form for their cooperative society and make by-laws according to their needs and on the basis of their practical experience and internationally recognized cooperative principles.

7. In some countries, where cooperative law is general and sets out only main principles, it is supplemented by detailed rules and regulations, sometimes referred to as decrees of application or implementation. Other forms of subsidiary legislation are provided through orders issued by the competent ministry. Such rules, regulations, decrees, orders and instructions are supposed to be in conformity with the laws on which they are based. However, this is not always the case: at times, they may even change the priorities or the objectives of the law, or shift its emphasis, for example, from liberal to restrictive regulations; they may in some instances become so numerous and cumbersome as to create an atmosphere of uncertainty and even to

immobilize true cooperative activities while, at the same time, often encouraging illegal practices.

8. Cooperative by-laws are usually written by the founding members at a cooperative; later they may be amended by the members according to procedures laid down in law or in the by-laws of the cooperative itself. As many cooperators are not conversant with the techniques of drafting legal texts and do not have detailed knowledge of the law, it is common practice for them to rely on model by-laws as guidelines. Such model by-laws are either prepared by the national registering authority (e.g. the Registrar of Friendly Societies in the United Kingdom or the United States Department of Agriculture) or by cooperative apex organizations as a service to new affiliates.

9. Cooperative law-making may be the prerogative of Governments, of provinces (e.g. Canada) or of autonomous regions (e.g. Italy, Spain). In federal States (e.g. the United States of America, Nigeria) the division of legislative powers between the federation and its constituent members is rather difficult; as a rule, cooperative legislation is a state matter, but there are cases where laws governing cooperatives (particularly those which operate in several states) are regulated at the federal level.

10. The attitude of the State towards cooperatives varies, depending, *inter alia*, on the economic system, government resources, the level of development of the country and the degree of maturity of the cooperative movement. Some Governments view cooperatives as valuable and desirable structures, worth promoting and supporting as contributors to the achievement of governmental objectives and policies. Others view cooperatives as just one form of economic organization, among others, which work on equal terms with commercial firms and public enterprises without privileges or undue restrictions. Elsewhere, attitudes may be negative, for example when the State sees cooperatives as autonomous, self-help organizations, possibly linked to the international cooperative movement, pursuing their own objectives and policies and working according to their own rules, perhaps contrary to the perceived interests of the State.

# III. Legislative and administrative initiatives taken in Western Europe, North America and Japan

## A. Legal and administrative framework for cooperatives

11. In Western Europe, North America and Japan, the cooperative movement started out with grass-roots organizations in the middle of the nineteenth century. Since then, cooperatives have become a major economic force, with the cooperative sector well represented in banking, modern industrial and service companies, in agriculture and in small and medium-sized craft enterprises. In these countries, cooperatives form an important part of the economy, commanding, in some sub-sectors, considerable market shares (e.g. in grain marketing, milk processing and dairy products). They have proved that they can be competitive in a market economy.

12. At the time of the creation of the first cooperatives, no special legal framework existed and their operations were restricted in many ways. The first cooperative act in the former German Empire was enacted on 1 May 1889, ending the insecurity surrounding the legal status of cooperatives. The act laid down the basic principles and tasks of cooperatives, i.e. the promotion of gainful economic activities of its membership through joint business operations. With only a few amendments and clarifications, the Act on Cooperatives of 1889 is still in force today as a federal law and, as the most important piece of legislation concerning cooperatives, is a symbol of the farsightedness of the founding fathers of the first German cooperatives and the universal validity of cooperative principles.

13. In Western Europe, North America and Japan, cooperatives were set up solely through private initiative and were, and still are, completely independent of government, based on the principle of self-administration. They operative as private sector companies in a market system, just like other companies. Membership is voluntary. In Germany, for example, the only governmental control over national cooperatives is that each must, by law, be a member of a registered audit association. The State has granted these associations the right to audit and to examine the commercial position of the cooperatives to ensure that they have conducted their affairs properly. As normal commercial companies, cooperatives in Germany compete with other commercial companies. For this reason, there are usually no special economic or tax arrangements made for them. The

only reported exception to this rule is that agricultural and forestry-based commercial and marketing cooperatives are exempted from corporation and trade taxes if they conduct business exclusively with their own members. The State does not in principle provide any specific financial assistance to cooperatives.

14. In France, the statutes of different categories (sectorial statutes) of cooperative production societies, banks, credit unions, consumer and agricultural cooperatives, etc. were elaborated during the period from 1880 to 1920. These sectorial laws defined the goals, membership and some principles of French cooperative societies. The law adopted in 1947 provided, for the first time, a general definition and brought together main principles and general rules of different types of cooperatives. At present, the activities of French cooperatives are regulated by general laws. From their origin, French cooperatives were legal entities of private law of a civil or commercial nature.

15. In the majority of European countries, there is an extensive legal framework at the national level providing cooperatives with regulations within civil and administrative law. In the Netherlands, cooperatives are governed by the provisions of the Dutch civil code, which reflects their special character. In Italy, cooperatives are governed by various laws that define their specific character. These specifics are recognized by the constitution (the social role of cooperation), and the national and regional laws on cooperatives of 1947, 1971, 1977 and 1985. In Iceland, the legal framework for cooperatives is provided by the Act on Cooperative Societies, however, tax provisions for cooperatives do not differ in substance from those for limited companies. In Greece, the law of 1986 governs cooperative activities at the local, regional and national levels. Greek cooperatives operate independent of State intervention and enjoy some tax exemptions. The Ministry of National Economy is the competent authority for assisting cooperatives in the urban sector such as the consumer, tourist, credit, transport, medical insurance, producer, pharmaceutical and other fields. The Ministry of Agriculture is the competent authority for agricultural cooperatives.

16. In the United Kingdom, the Government has provided a solid legislative framework for cooperatives since 1893. The main legislation currently in force is the Industrial and Provident Societies Act of 1965, which has various pieces of supporting legislation, the last of which dates from 1978. Spanish cooperatives are governed by the constitution of 1978 and the general law of 1987, which stipulated the division of the regulation of their activities between the central, regional and local governments. The central Government, through the Ministry of Labour and Social Affairs, supports and empowers cooperatives and provides incentives for the formation of new cooperatives organizations and the training of cooperative leaders. The law of 1990 introduced new regulations with favourable tax treatment for cooperatives given their social importance and functions. The cooperative societies in Cyprus are registered and operate according to the Cooperative Societies Law and Rules. They are autonomous and are supervised by the Registrar of Cooperative Societies, Head of the Cooperative Development Department at the Ministry of Commerce, Industry and Tourism. Cooperatives are audited by the Independent Audit Service for the Cooperative Societies. Owing to the recognition of the social importance and role of cooperatives, their activities are exempted from tax payments and various other fees.

17. The Constitution of Portugal recognizes the status of the cooperative sector as equal to that of the public and private sectors. The special character of cooperatives is recognized for regulatory and administrative purposes by the Cooperative Code and supplementary legislation and the Tax Statute of Cooperatives. In Finland, the first Cooperative Societies Act, passed in 1901, recognized the particular character of cooperatives for regulatory and administrative purposes. It has since been amended, in 1954 and 1989. In Sweden, the general legislation governing cooperatives is the Economic Association Act of 1987. In addition, cooperative banks are governed by the Members Bank Act of 1995 and housing cooperatives by the Housing Cooperatives Act of 1991. The first law governing cooperatives in Malta was introduced in 1946 and was radically revised in 1978, with minor amendments ensuing. Unlike most other European countries, there is no general legislation governing cooperatives in Belgium, Denmark and Norway. In Norway, cooperatives are governed by separate laws such as the House Buildings Association Act and the Insurance Operations Act, both enacted in 1960. In Belgium, cooperatives are governed by laws for commercial firms and there is nothing within the law that distinguishes a cooperative from a regular business. The law which governs cooperatives in Turkey was passed in 1969 and has since been amended. Traditionally, the legal and administrative framework that governs the activities of Turkish cooperatives has been similar to that of other European nations.

18. In the United States of America, cooperatives are subject to state rather than federal laws. State laws are written in broad, general terms and mechanisms for conducting cooperative affairs are not usually mandated by law. The members are free to decide how they will operate their business, so long as regulatory statutes are not violated.

These laws recognize the specific character of cooperatives by (a) sanctioning democratic control of the organization on a one-member, one-vote basis; (b) limiting returns that can be paid on invested capital; and (c) authorizing the return of earnings to members based on patronage, not investment. There are several national (federal) regulatory laws that support cooperative activity by (d) providing members with a limited exemption from anti-trust law to agree on prices and other terms of trade when marketing farm products on a cooperative basis (the Capper-Volstead Act); (e) taxing earnings of cooperatives only once, usually at the member level (Internal Revenue Code), thus acknowledging that cooperatives are not operated for their own profit, but rather to act as agents for their members; (f) minimizing the number of cooperatives that must register their financial reports with the Government (federal securities laws), thus recognizing the close relationship between the cooperative and its member-users. National institutions assisting persons interested in organizing and operating cooperatives include the United States Department of Agriculture's Cooperative Services Group, its Rural Utility Service, the Farm Credit System and the National Cooperative Bank.

19. In Japan, the legal and administrative framework governing the activities of cooperatives is set up according to different sectors (agriculture, consumer, etc.) and deals with labour unions and consumer cooperatives. Labour unions are protected by the Labour Union Law of 1949.They have the rights of a corporation and a special tax system is applied to them. Activities of consumer cooperatives are governed by the Consumers' Livelihood Cooperative Society Law of 1948, which is regulated by the Ministry of Health and Welfare. Consumer cooperatives operating in only one prefecture are regulated by prefectural governments, the others by the Ministry.

## B. Initiatives taken in the 1990s

20. According to the information received by the Secretary-General on legislative and administrative initiatives taken within the last decade, it is possible to define three groups of countries. In the first group are those countries which reported that no substantial or significant changes had recently taken place which would have affected cooperative development. For example, while various administrative rulings have modified the legal status of cooperatives from time to time, most of the laws in the United States concerning cooperatives were enacted in the 1930s and have remained basically unchanged. Cooperative legislation has not been substantially amended recently in Germany or Greece. In Greece, recent slight alterations in cooperative law have applied to cooperative credit institutions (cooperative banks), in order to support them in playing a greater role in regional development and in financing small and medium-sized enterprises. In Germany, the amendments made were not related to the cooperative sector itself, but were the result of changes in other areas of law. In 1990, amendments were made in the context of implementing the directive of the European Union on accounting in the banking sector in German law. The act of 1993 (a) adopted and clarified certain rules to improve and streamline the registration procedure of cooperative members and (b) partially altered a provision on the meeting of cooperative representatives. The act of 1994 broadened the scope for cooperatives to adapt to changing market and competitive conditions. Cooperatives were given the legal right to reorganize themselves in any other corporate form, to merge with other companies, to hive off parts of a cooperative or to split up an entire organization and to transfer its activities to existing or newly established companies. The introduction of the euro currency on 1 January 1999 necessitated alterations to the Act on Cooperatives. In France, the law of 1992 on modernization of cooperative enterprises included numerous measures (of optional character) intended to reinforce cooperative funds, to prevent difficulties and to create favourable conditions for cooperative development. In Japan, some deregulation measures on cooperative activities have been taken since 1990 in the wake of the administrative and financial reforms, including the review of the role of the Government. Consumer cooperatives are no longer allowed to serve non-members, but the notice issued by the Ministry of Health and Welfare in 1993 allows them to offer certain kinds of care services to non-members. This year the range of services for non-members has been expanded, including domicile cares.

21. In the second group are countries in which some significant changes have been introduced within the last decade affecting the status, legal and administrative framework that governed the activities of cooperatives. In Portugal, the new Cooperative Code (1997), the new legal systems for funds of agricultural credit cooperatives (1995) and for cooperatives of social solidarity (1998) were adopted to create or to modernize a legal situation more favourable to cooperative activities. In Iceland, the legal framework for cooperatives (Act on Cooperative Societies of 1991) was amended in 1997. The new law is more extensive and has many provisions similar to those embodied in the acts on public limited companies. The main changes involved more articulate provisions on cooperative societies similar to the legislation on limited companies. For example, cooperatives

which experience financial difficulties or need more capital for other reasons got an opportunity to increase their capital by issuing shares similar to those issued by limited companies. Such shares did not, however, carry voting rights. The most recent changes in Dutch cooperative legislation date from 1989 and include an adaptation of the definition of cooperatives and the introduction of specific rules for certain large cooperatives. At the same time, the rules for cooperatives were collected under a separate heading, "cooperatives and mutual assurance associations", to strengthen the position of cooperatives as separate legal entities together with non-profit organizations and limited companies.

22. The important changes in Italian legislation include the law of 1991, which governs the activities of social cooperatives operating in the area of (a) public health and education services and (b) social rehabilitation of disadvantaged persons (disabled, former convicts and drug addicts, etc.). The law of 1992 represented a comprehensive reform, introducing many basic changes into cooperative legislation. The most important of these was the possibility of having outside financial partners, a change that has helped to solve the problem of insufficient capital usually affecting cooperatives. The most recent law of 1997 provided a special definition of "the small cooperative" and simplified administrative procedures facilitating the creation of cooperatives and their participation in competitive bidding for public contracts. The numerous laws on cooperative development adopted in Spain since 1990 have been aimed at ensuring the autonomy and self-regulation of cooperatives and at providing them with more flexibility in accommodating the requirements of the modern, very competitive market and with a proper legal base corresponding to that of the European Union; helping the cooperatives create more working places; making a cooperative formula more popular among the disadvantaged groups in the population and promoting associations of cooperatives.

23. In March of 1997, the Canadian Government introduced a new Cooperative Associations Act to modernize the existing legislation and to place cooperatives in a better position to respond to challenges facing rural communities. This new legislation ensures that cooperative principles continue to be maintained and is expected to be enacted in the fall of 1998. Changes were made to modernize the previous legislation, to adopt many of the principles governing Canadian corporations and to reflect the changing economic environment, including the important role equity capital plays in the market place. Changes will allow cooperatives access to alternative means of financing, including raising capital from non-members while maintaining cooperative principles such as democratic control by members.

24. In the third group are countries where amendments to the national legal and administrative framework that governs the activities of cooperatives are still in the process of elaboration. In Finland, the law on cooperatives is being thoroughly reformed with a view to updating it, particularly the provisions concerning the financial activities of cooperatives. The reform process is strongly supported by the cooperatives whose aim is that they should have the same freedom to generate as the private sector. The process is to be finished in 1999. Austrian cooperatives have undergone an extensive reform process to meet the challenges of the global economy. In this context, there are initiatives to improve the efficiency of administrative procedures, to ameliorate the dissemination of information to members as well as creditors, to facilitate the participation in the cooperative sector and to reinforce the legal position of the cooperatives. Aiming at strengthening the operation and raising productivity of Greek agricultural cooperatives as independent, autonomous and self-administered enterprises, a new law has been drafted based on international cooperative principles. The process of revising cooperative legislation is still going on in Portugal and Cyprus. The Ministry of Health and Welfare of Japan has set up a working group to consider the roles of consumer cooperatives in the twenty-first century. Cooperatives in those countries (e.g. United Kingdom), that have experienced only minor regulatory amendments since 1990, have expressed the hope that major legislative changes will soon be introduced. Proposed legislation is expected to modernize and make the regulation of cooperatives more practical, while emphasizing that cooperatives are different from other business enterprises.

25. Germany, given its unique situation since reunification, took special steps to revise the legal status of the cooperative sectors which were formerly closely integrated within state and parastatal organizational structures. Following reunification, the Act on Cooperatives of the Federal Republic of Germany also applied to the cooperatives located in the former German Democratic Republic. However, additional provisions were needed to regulate the transition of the former socialist cooperatives into the market system and to create a uniform legal situation, the basis for which was provided by the Unification Treaty. In addition, the Ordinance on the Establishment, Activities and Reorganization of the Craft Production Cooperatives and the Agricultural Adjustment Act, pertaining to the reorganization, dissolution and closure

of cooperatives and to the property rights of their members, now govern the activities of cooperatives throughout Germany.

## IV. Legislative and administrative initiatives taken in countries in transition

26. In the former socialist countries, the legislative and administrative framework that governed the enterprises which were called cooperatives had the appearance of being democratic. Thus, according to the legislation, membership in "cooperatives" was considered to be voluntary but in reality people were compelled to join. The administration of socialist cooperatives was in effect subject to detailed compliance with State directives. Because "genuine" cooperatives were considered as a derivative of market relations, the socialist State sought to make the "socialist" cooperative a tool of the centrally planned economic system oriented to meet the needs of the State or the general public, rather than for the interests of the members of the cooperative. Thus, the by-laws of cooperatives were not made by the members but provided by the State. Socialist cooperatives were given the honourable historic role of transforming private ownership, through cooperative ownership, into collective and, eventually, State ownership.

27. When centrally planned economies started their transition to free market economies, people willing to promote and restore genuine cooperative development found themselves in a very difficult situation. In addition to having to deal with the problems of economic dislocation and social upheaval, those trying to promote the rebirth of cooperatives had to battle for a complete change in the economic, political, legal and psychological environment. The cooperators themselves had to travel a long road of painful change: democratization, depoliticization, privatization, restructuralization, member-orientation, reorientation of thinking, etc. This turned out to be a difficult and complex process causing not only legal and administrative but also psychological problems. In some countries where Governments chose the most rapid transition to a market economy, cooperatives were considered to be remnants of the previous, socialist regime. The special character of cooperatives was not recognized for regulatory, administrative or tax purposes and they were treated like any other private enterprise having to survive in a free market without special tax treatment. In countries where Governments chose a slower transition to the free market economy, in an attempt to spare the population the pain of "shock therapy", the old system of "kolkhoz" and other "collective enterprises" was kept alive through funding and privileges provided by the State. Under these conditions, the new generation of cooperatives has had great difficulties in surviving. It is noted that in some countries the heads of cooperatives or of cooperative unions at different levels would not like to lose their close links to the local or national governments.

28. At the beginning of their transition to free market economies, the former socialist countries faced the immense challenge of elaborating a totally new legal and administrative framework for almost all aspects of life, including cooperative arrangements. The lack of corresponding knowledge and experience, the lack of specialists, particularly in the sphere of law and economics, was more than obvious. Thus, the first legal regulations for the new generation of cooperatives, adopted in these countries at the beginning of the 1990s, soon needed revision, amendment, clarification and, for specific types of cooperatives, additional laws. For example, the Law on Enterprises, adopted in Lithuania in 1990, included a provision which permitted cooperatives to operate under the regulation of a special law. The Law on Cooperation, regulating the legal status, activities, establishment and other main issues regarding cooperatives, was adopted in 1993 and, in 1995, with supplements and amendments, it was renamed the Law on Cooperative Societies (cooperatives). At the draft stage, it had been reviewed by the International Cooperative Alliance and other international experts. Changes to the law were made, *inter alia*, to ensure the autonomy and to protect the property of the cooperatives. The law established legal provisions for the organization of national cooperatives on the basis of the principles of the international cooperative movement; legalization of property and non-property rights and relations; and the structure of cooperatives bodies, their rights and duties, formation of capital, reorganization, restriction of activities, etc. The drafting of the documents regulating the Lithuanian cooperative sector was done with the participation of representatives of consumer and agricultural cooperatives.

29. A similar situation is reported from Estonia (the Associations Act of 1992, Apartment Associations Act and the Commercial Code of 1995); Armenia (laws "On Enterprises and Employers' Activities", "On the Cooperatives", "On the Consumer Cooperatives"); and Georgia (the Georgian Government leader's order of 1993, the law on Consumer Cooperation and the civil code of 1997). In Slovenia, the Cooperatives Act of 1992, with some amendments in 1993, 1994 and 1996, was aimed at liberating cooperatives from their parastatal functions, restructuring

cooperatives on the basis of internationally recognized principles as independent economic organizations compatible with the market economy and settling the restitution of the former cooperative property. The Cooperative Association of Bosnia and Herzegovina had a significant influence on the preparation of the new general Law on Cooperatives of 1997 and reported that no longer being an instrument of State policy was of the greatest importance to the cooperatives. In the Federal Republic of Yugoslavia, the law on cooperatives of 1998 regulates the establishment and operation of cooperatives, grants preferential tax treatment to youth and students' cooperatives, defines and ensures the identity of cooperative property and bans its transformation into other forms of property. In the Republic of Moldova, there have been no changes in the legal status of cooperatives since 1990, as reported by the Union of Consumer Societies. The main changes took place in their economic situation because of the growing number of competitors. The individual character of cooperatives is recognized only in some instances, as in the case of local taxation.

30. The Central Union of Consumer Societies (Centrosojuz) of the Russian Federation reported that because of the support of the President of Russia, the Government and the central State organs, consumer cooperatives were the only organizations which managed to preserve their structure and system during the period of transformation to the market economy. The legislative framework for cooperative activities has been created within the last five years on the basis of the civil code and the laws on consumer cooperation (consumer societies, their unions), on agricultural cooperation and on production cooperatives. Annually concluded agreements between the Government and Centrosojuz fix tax and other privileges. The Central Union of Cooperatives of Azerbaijan reports that there was only one change in the cooperative legislation — the law of 1996 signed by the President of the Republic. The law says that the property of cooperatives belongs to the members and that the Government must not interfere in the activities of the cooperatives. In Slovakia, the revival of special cooperative laws for the agricultural and other movements such as housing, consumer and producer cooperatives took place in 1988 and 1990. In 1992, the Code of Commerce, which incorporated the legal regulations on cooperatives was adopted.

31. In Poland, the law of 1990 provided for the liquidation of all cooperative unions and introduced a statutory ban on the association of cooperatives. Other legal regulations were introduced which favoured splits within the cooperative movement. The law brought about the disintegration of the cooperative movement and significant material losses including property, manufacturing plants and real estate. The 1994 Cooperative Law reinstated the right to voluntary association of cooperative societies into cooperative unions. The purpose of these changes was to kill discredited old institutions off and allow new cooperative structures to emerge.

32. The National Cooperative Council of Hungary reported that after the transformation of the cooperative system, owing to the so-called Unified Cooperative Law of 1992, there were some acts restricting the autonomy of cooperatives, primarily the agricultural ones, and in particular, their right to dispose of their properties. For example, the Council considers the permission provided by the law to individuals or small groups willing to terminate their membership and to take out their assets in kind from the cooperatives, corresponding to their original investments and work, to be discrimination in terms of cooperative self-government and property relationships and a deterioration of the Hungarian cooperatives' method of adaptation to the market economy. There were some other attempts by the Government to transform cooperatives, primarily the agricultural ones of the so-called kolkhoz type, into business associations. Representatives of the cooperative sector participated in the codification of the 1992 law, but are reported to be dissatisfied with the adopted text. The National Cooperative Council envisages that the situation could be repeated since the Government initiated enactment of a new cooperative law in 1996.

33. The legal framework governing Czech cooperatives is embodied in the commercial code of 1991 and the law of 1995. The Cooperative Association of the Czech Republic reported that the new legislation brought both positive and negative changes. Among the latter, the Association lists the inclusion of cooperative legislation into the commercial code, the provided definition of a cooperative society and the absence of the possibility of associating cooperatives into organizations of interest-associations. Both the Cooperative Association and the Association of Agricultural Cooperatives and Companies in the Czech Republic note that the special character of cooperatives is not recognized and they do not receive any tax relief or any other preferential treatment. Despite the most strenuous efforts of the representatives of the Czech cooperative movement, government bodies neglected to create suitable economic and other necessary conditions to strengthen the influence of cooperatives under the conditions prevailing in a market economy and towards the solution of social and cultural matters.

# V. Legislative and administrative initiatives taken in Africa, Asia and Latin America

## A. Legal and administrative framework for cooperatives

34. The original concept of cooperatives took root in the majority of the countries of Africa, Asia and Latin America at the beginning of the twentieth century. Some changes in the legislative and administrative framework governing cooperative activities took place when the countries gained their independence and/or started determining their own way of coping with economic, ecological and social, including demographic, problems. In many countries, the Governments preferred to have State-controlled and State-funded cooperatives as a tool or an extension of public administration.

35. In Ghana, cooperatives were introduced in 1928 by the colonial Government, which had a firm conviction that the grouping of farmers into cooperative organizations would stabilize agriculture. The first Cooperative Societies Ordinance, enacted in 1931, was modelled on cooperative legislation in India, Mauritius and Ceylon (now Sri Lanka) but was soon found to be unsuited to local conditions. The subsequent Ordinance of 1937 was repealed in 1968 and replaced by the Cooperative Societies Decree and Regulations. Since then the Decree has defined the legal framework for the registration and operations of cooperatives and the role of the Registrar in the promotion and control of cooperative societies. The responsible Ministry reports that the 1968 Decree is acknowledged to be outdated and to constitute an impediment to the revitalization of the cooperative movement in the country. Among the many reasons noted by the Ministry in support of adopting new cooperative legislation, it cited the following: the present Decree is restrictive and control-oriented; it was designed primarily for agricultural cooperatives; it emphasizes social rather than business aspects of cooperation; and the role of the Ghana Cooperative Council and other apex bodies for the cooperative movement is not spelt out. It is foreseen that the new cooperative law will express the underlying intention of the Government to exercise certain promotional functions for a transitional period only and thereafter, as soon as feasible, to hand over them to the cooperative organizations.

36. The Ministry of Cooperative Development of Kenya reports that the legal framework within which cooperatives operate is set out in the Cooperatives Societies Act of 1966. Cooperatives are registered and viewed as business organizations that ascribe to and uphold the ideals of cooperative principles. The taxes on each cooperative are assessed separately, depending on the activities and the turnover for specific periods of time. The Government provides technical staff, who are well trained in both financial and administrative areas and who are sent country-wide to supervise the daily activities of the societies. The Cooperative Societies Act provides a comprehensive administrative machinery, which includes disciplinary measures for irresponsible committee members and lays down procedures for settling disputes. By-laws provide guidelines for the internal administration of the cooperative, define its objectives, relations between the members, the power of the management committee, etc. and are amended from time to time to reflect changes.

37. The Government of Mauritius reports that the cooperative movement in that country is governed by the Cooperative Societies Act of 1976 which sets the framework for the registration, management, audit and control, the settlement of disputes by arbitration and the liquidation of cooperatives. As guardian of the Cooperative Act, the Registrar of Cooperative Societies ensures that the cooperative principles are adhered to at all stages of a cooperative's operations, starting from the very day of registration. From the introduction of the cooperative movement in Mauritius, cooperatives were endowed with some special privileges vis-à-vis other business organizations. They are exempted from: income tax; customs duty; licence fees; stamp duty; registration dues and transcription and inscription fees. In addition, the Government allocates a substantial budget for the promotion and development of the cooperative movement in the country. All these privileges constitute recognition by the State of the underlying importance that cooperatives attach to self-help and common benefit actions and activities as compared to sheer profit-motivated enterprises. The Ministry of Interior and Decentralization of Guinea reports that the legislative framework of cooperative activities in the country is coordinated by two laws: (a) the ordinance of 1988, which defines the organization and functioning of pre-cooperatives and cooperatives, and (b) the code of economic activities. The administrative framework is being determined by the Ministry. Senegalese cooperatives are governed by the law of 1983, which puts them under supervision of the Department of Agriculture. In a similar way, the legislative framework for cooperatives in Morocco is determined by the law adopted in 1983 as noted by the Office of Cooperative Development of the Ministry of General Affairs of the Kingdom.

38. The Government of Syria reports that the national legislative framework for cooperatives consists of several laws whereby different types of cooperatives are governed by separate laws. For example, activities of housing cooperatives are regulated by the law of 1956 and the special law of 1981, which provide some privileges of tax and fees exemption. The consumer cooperatives are governed by the law of 1959. The State legislation of 1974, providing rules for cooperative activities in the agricultural sphere, guarantees autonomy, free election of managerial bodies, exemptions from some taxes and fees, assistance in marketing cooperative products and the training of personnel, etc.

39. The Government of Bangladesh reports that the cooperative movement there has been in existence for many decades, having started with agricultural societies and spreading to almost every sector of the national economy. The cooperative sector has been recognized in the Constitution as independent. Cooperative societies are guided by the cooperative acts of 1984, the cooperative rules of 1987 and the by-laws of individual societies framed in accordance with the acts and rules. The Government is applying the acts and rules through the Department of Cooperatives under the Ministry of Local Government, Rural Development and Cooperatives. As the Head of the Department, the Registrar is responsible, *inter alia*, for: the administration of the cooperative acts and rules; cooperative audits and inspections; promotion of occupational cooperatives; preparation, implementation and monitoring of development projects; constitution of managing committees; financial assistance to cooperative societies; and the distribution of profits.

40. The Government of Thailand reports that the legal and administrative framework governing cooperative activities consists of (a) the Cooperative Act of 1968, which applies to all types of cooperatives formally registered at the Cooperatives Promotion Department and is currently under revision, and (b) the rules and regulations on the administration of cooperatives. The latter document is individually formulated for each cooperative on the basis of the draft rules and regulations issued by the Cooperatives Promotion Department. In Pakistan, prior to 1977, cooperative societies were exempted from income tax levies and Stamp Act taxation. After 1977, the Government withdrew these concessions, in order to generate more funds. Today, the special character of cooperatives is not recognized for regulatory, administrative or tax purposes.

41. The Government of Fiji reports that, until 1998, the legal framework for cooperative operations was provided by the rather outdated Cooperative Societies Act, enacted in 1947. For example, it did not provide flexibility for the accommodation of the operation of new types of cooperatives such as workers' cooperatives or land purchase cooperatives. Following a study by the International Labour Organization, it was found necessary to introduce new legislation altogether. Responsibility for the formulation of policies pertaining to cooperatives and the monitoring of their implementation lies with the Department of Cooperatives of the Ministry of Commerce, Industry, Cooperatives and Public Enterprises. The Department also provides management advice and consultancy services to cooperatives and ensures that they operate in compliance with the legislation. Cooperatives are exempted from having their profits taxed.

42. All cooperatives in Singapore are governed by the Cooperative Societies Act, which recognizes the special statute of cooperative organizations in the promotion of the welfare of their members. In recognition of this special status, cooperatives are exempted from paying corporate tax. However, they are still expected to pay a taxed portion of any surplus to the Central Cooperative Trust Fund, which provides financial support in the form of a grant to the Singapore National Cooperative Federation to carry out projects and activities that benefit the Singapore cooperative movement. The main legal and administrative framework that governs cooperatives in the Philippines includes the cooperative code and the regulatory body called the Cooperative Development Authority. While the special character of cooperatives is recognized, cooperatives do not find this recognition effective. The activities of credit unions and cooperatives in Hong Kong are governed, respectively, by the Credit Union Ordinance and the Cooperative Societies Ordinance. A public officer appointed as the Registrar of Credit Unions and Cooperative Societies is conferred or imposed by law to register and regulate cooperatives operating within the territory. Under the existing legal framework, credit unions are exempted from paying taxes.

43. The cooperative movement as well as its legislation in Latin America has a long and diverse history. In Chile there is the general law on cooperatives of 1978, which is applied through the Ministry of Economy, Development and Reconstruction. The general law on cooperative societies in Bolivia was enacted in 1958 and applied through the Ministry of Labour and Micro-enterprises. The National Administrative Department of Cooperatives of Colombia reports that cooperative development is regulated by the legal framework consisting of provisions of the national Constitution, the law of 1988 and a number of special decrees on cooperatives enacted at the end of the 1980s. On the contrary, until now, Uruguay has no general law on

cooperatives. Cooperatives find it difficult and confusing being governed according to different provisions of numerous laws, decrees and regulations. In Trinidad and Tobago, national cooperatives are governed by the Cooperative Societies Act, which recognizes the special character of cooperatives for regulatory, administrative and tax purposes. Costa Rica has four main national laws that govern the activities of cooperatives. At the administrative level, cooperatives have the status of autonomous organizations, but are limited by certain legal provisions that authorize the National Institute for Cooperative Development to oversee and control their activities. They are also governed by special regulations for specific economic activities and, in some cases, have special tax-exempt or tax-reduction status on income and assets.

## B. Initiatives taken in the 1990s

44. As a result of globalization, countries in Africa, Asia and Latin America have had to confront various forced retrenchments, structural adjustment programmes overseen by the World Bank, a process of democratization and the need for modernization of production and investments in rural and urban areas. In addition, rapid changes in Eastern and Central Europe and in the former Soviet Union have shaken the belief in a centrally planned and party-controlled economy. Many Governments have reconsidered their regulatory role, deregulation and decentralization, privatization of State enterprises, cuts in government spending and restrictions on government involvement in economic affairs. A mainstream policy of the State withdrawal from supervising cooperatives has brought about various changes in the legislative and administrative framework governing cooperatives in the 1990s. The changes were mainly to ensure the autonomy as well as the efficiency of cooperatives, to incorporate the internationally recognized cooperative principles, to diminish the role of the State, to simplify and clarify existing provisions, to expedite administrative procedures, to provide regulation for new types of cooperatives and to make cooperatives self-sustaining, self-reliant, self-managed and commercially viable for faster development.

45. In Kenya, the new Cooperative Societies Act of 1997 has removed all ambiguities and legal flaws by separating the functions and roles of the Government and the cooperative movement. It has also established the Department of the Registrar to handle daily administrative matters of cooperative societies in a regulatory and facilitative way and has institutionalized the Department of the Commission for Cooperative Development. The Ministry of Agriculture and Cooperatives of Tanzania reports that modern cooperative legislation consists of the Cooperative Act of 1991 with amendments of 1997. The administration of the Act is provided at the national level by the Registrar and at the district level by the District Cooperative Inspector. The special character of cooperatives is understood vis-à-vis regulation and administration, but not as regards taxation. The major change has been from a State-controlled cooperative system to one of autonomous and private organizations. Administratively, the government role has become primarily a regulatory one.

46. In Mauritius, the Cooperative Societies Act was amended in 1992 and 1995 to make it more responsive to the requirements of the day, especially in the financial sphere. The changes were prompted by the deterioration of the financial situation and the management of cooperatives over some years. The Registrar of Cooperative Societies was empowered with closer and stricter control over the activities of the Credit Union, notwithstanding the provisions of the Banking Act. In Guinea, on the basis of the Ordinance of 1988, the Ministry of the Interior and Decentralization created the National Service of Technical Assistance to Cooperatives to improve their technical and professional performance. A new cooperative law was adopted in December 1997 in Burkina Faso.

47. In Uganda, the main legal and administrative framework that governs cooperatives was adopted in 1991 and 1992. Since 1990, the State has been implementing a framework of structural adjustment and liberalization policy. The once tight administrative control has crumbled and, as a result, the cooperatives have been deprived of all forms of support and supervision. Cooperatives have become, de facto, autonomous and deprived of human and financial resources. In Senegal, according to one cooperative, while the movement got its independence, it was not provided with any means of survival. As a result, the marginalization of the cooperatives contributed to a situation of very disparate and non-functioning structures. Today, cooperatives that survived this period have demonstrated a keen ability to adapt to evolving changes. They are in the process of consolidating, strengthening themselves and facing an economic, financial, legislative and fiscal environment very different from the traditional one.

48. In Jordan, the cooperative law of 1997 instigated a restructuring process in the national cooperative movement and organizations which made them autonomous from the State and allowed them to operate as private enterprises. Cooperatives are not taxed for any services provided to their members. Changes in the Cooperative Law of Bahrain of

1972 concerned diversification of new types of cooperatives to be licensed and the rectification of those that work badly. Indonesian cooperatives are recognized as business enterprises by the law of 1992 and are subject to taxation by the law of 1994, before which time they were tax exempt. According to the laws, the role of the Government is to create and develop a climate and conditions that stimulate cooperative growth and socialization and to provide cooperatives with guidance, facilities and protection. The enactment of a new Cooperatives Act in March 1998 in Fiji was aimed (a) to simplify certain provisions of the old law to make them more accessible to the people at grass-roots level and (b) to bring the law in line with new socio-economic realities in the country and with recent developments in cooperative legislation in the international arena.

49. The Republic of Korea, Pakistan, Singapore and Hong Kong have all gone through different levels of change in legislation that ultimately affected the way in which cooperatives function in this region. In the Republic of Korea, in the late 1980s, the Fisheries Cooperative Law was amended to pave the way for members of the fisheries cooperatives to directly elect their presidents and for the elected presidents to directly elect the chairman and president of the National Federation. The factors that determined the change were the national democratic movement and the need to ensure the autonomy of cooperatives. According to the responses from two Pakistan cooperatives, the 1992 Cooperative Societies Act makes no specific changes affecting the legal and administrative framework that governs cooperatives in Pakistan. In Hong Kong, the Credit Union Ordinance was amended in 1993 and 1995 to reduce increasing costs (winding-up) and to simplify and clarify existing legal and administrative provisions relating to winding-up and liquidation. Changes in requirements were also expedited. In Singapore, the legal and administrative framework governing cooperative activities has been amended several times. In 1990, cooperatives were required to contribute 20 per cent of their surplus in excess of a half a million dollars to either the Central Cooperative Fund or the Singapore Labour Federation. Most of the national trade union cooperatives, which are the largest and most successful, contribute their surplus to the Federation which is then channelled to the benefit of the lower income workers in Singapore. The cooperative act was amended in 1994 and 1997 to give the cooperative movement more autonomy and flexibility in carrying out its activities. The increased funding has enabled the Singapore National Cooperative Federation to organize more projects and activities, while the exclusion of capital gains from the computation of surplus is to make cooperatives more competitive with private enterprises.

50. The Governments of Colombia and Uruguay reported numerous changes in their cooperative legislation and administrative regulations since 1990. Among the principal changes were the provision of tax exemptions, the elimination of many restrictions earlier posed on cooperatives, the reduction of governmental bureaucracy over cooperative movement and the treatment of cooperatives like other commercial entities. No changes are reported to have been made to the current law on cooperatives in Bolivia, apart from the minor ones made to improve the present savings and loans cooperative system by providing adequate supervision, regulation and monitoring. No substantive changes have been made concerning the legal framework of cooperatives in Argentina, but in 1996, the National Institute for Cooperatives was merged with the National Mutual Institute, despite the disapproval of the cooperative movement which reported this fact. The merger, it was explained, resulted from budgetary economy, but it was harshly criticized by Argentinian cooperatives as they have never been integrated within State or parastatal structures. In Paraguay, a law was approved in 1994 establishing a new legal framework for cooperatives and recognizing their special character. It lowered an average market interest rate for cooperatives based on capital investment, established the advisory and consultative councils with cooperative representation and advanced the autonomy of cooperatives. However, the law is now regulated by the 1996 Decree, which is considered by some cooperators to be contradictory to the law of 1994. Convinced that the Decree is detrimental to the interest of the movement, several cooperatives have appealed to the Supreme Court over its lack of constitutionality.

51. There are a number of countries in Africa, Asia and Latin America where the process of updating the current legislation on cooperatives is ongoing, while others are in the midst of proposing change. For instance, in Trinidad and Tobago there have been no changes made in the legal and administrative structure since 1990. However, the National Organization for Credit Unions has recently submitted proposals that would make changes to the current legislative framework. The proposed changes seek to recognize credit unions as financial cooperatives and to create a legislative and regulatory framework for them. In Costa Rica, the major change that has taken place was the promulgation of a law in 1994, which regulates the financial activities of the cooperatives fiscal system. Apart from these specific instances, the restructuring process has not resulted in a complete revision of the legal status of cooperatives. Some

bills are currently being drafted with the objective of effecting such revisions. In Thailand, there have been no significant changes affecting the legal and administrative framework governing cooperatives since 1990. However, some changes, caused by the growth of membership and activities of cooperatives affecting the extent of self-reliance on cooperative resources, autonomy and the capabilities of cooperatives to self-govern, are currently being made.

52. The Government of Ghana reports on several attempts to change the laws governing cooperatives in the last 15 years. Some of these attempts have been local, mainly involving the Ghana Cooperatives Council and its affiliates. Other attempts have involved external assistance from the World Bank, the International Cooperative Alliance and others. Since 1996, the International Labour Organization has been assisting the Ministry of Employment and Social Welfare to draft a national policy on cooperative development and a new cooperative law, which is soon to be presented for promulgation. At the beginning of 1998, the Government of Morocco signed a five-year agreement on cooperative development with the Food and Agriculture Organization of the United Nations to enable cooperatives and their organizations to play a more significant role in the harmonious development of the country. In Bangladesh, the joint United Nations Development Programme/International Labour Organization mission on cooperative development planning submitted a report to the Government, which led to the formulation of a law reform committee to revise the current cooperative acts and rules. The Parliament of Chile has been discussing a new draft on cooperative legislation since 1994. Revision of the existing laws or promulgation of new cooperative legislation is also under process in Bolivia, Burkina Faso, Benin, Cape Verde, Guinea and Niger.

## VI. Participation of the cooperative sector in reforming cooperative legislation

53. It is normal for the legislative process in the countries of Western Europe, North America and Japan to involve the cooperative movement in reviewing any contemplated change in the legal and administrative framework for cooperatives. Reports from both the Governments and cooperatives or cooperative organizations of these countries provide information on the active participation of representatives of the cooperative sector in the revision or redrafting of legislation. Cooperatives either initiate innovations or get early information from the Government on planned amendments in legislation and are invited to submit proposals, to consult on and to participate in drafting legislation on cooperatives. In many countries, the cooperative movement has developed strong lobbying forces to apply political pressure to pass or protect favourable legislation.

54. Countries in transition present a mixed picture. In some, for example, Lithuania, Estonia and a few others, cooperatives initiated and participated in the drafting of legislation or regulation affecting the cooperative sector and its activities. On the other hand, the national cooperative organizations of Hungary, Slovenia, Poland and, occasionally, Bosnia and Herzegovina, although they participated to some extent in the revision or redrafting of legislation, would have welcomed having more influence over the process, especially in the 1990s. The strongest representations were made by two cooperative organizations in the Czech Republic regarding what they considered to be insufficient attention by the concerned governmental bodies to the interests of the national cooperative movement and the necessity of adopting new cooperative legislation.

55. A mixed situation is also reported from countries of Africa, Asia and Latin America. Thus, cooperatives in Uganda and Senegal report that there was practically no cooperative involvement in the reform or rewriting of legal and administrative systems. Cooperatives of Pakistan have the same complaint. Although cooperatives in Singapore are consulted before adoption of any major changes in legislation, cooperatives in the Republic of Korea, Hong Kong and Thailand express their wish to have a bigger say in the process. Cooperatives in Latin America and the Caribbean are reported to play a more active role in the legislative process.

## VII. Attitude to elaborating United Nations guidelines for the development of cooperatives

56. The questionnaire of the Secretary-General transmitted to the Member States sought, *inter alia*, to ascertain government positions regarding the desirability and feasibility of elaborating United Nations guidelines aimed at creating a supportive environment for the development of cooperatives and their willingness to participate in and contribute to the elaboration of such guidelines. Among the Governments that reported on this question, none were explicitly opposed to such an exercise or stated explicitly that they were unwilling to participate.

57. Most Governments of Africa, Asia and Latin America reiterated their full support for General Assembly resolution 51/58 and of cooperative development in general. Several respondents further specified that they considered that guidelines aimed at creating a supportive environment for the development of cooperatives elaborated by the United Nations would be of great value for reforming and updating their national legislation. Governments of this group of countries reported that they would support and contribute to elaborating United Nations guidelines.

58. All Governments of countries in transition that replied to the questionnaire expressed their support to the United Nations resolutions concerning cooperative development issues and were ready to contribute to elaborating United Nations guidelines.

59. The majority of reporting Governments from countries of Western Europe, North America and Japan considered it important to offer balanced and practical rules for all legal entities, including cooperatives. Guidelines can serve as important models for countries to aid further debate on improvements in their national legislation. These countries expressed their willingness to contribute to elaborating the United Nations guidelines, which could be considered as an exercise in drafting a strategy to develop cooperative systems in emerging countries within the framework of a broader strategy of creating jobs and shared prosperity.

60. One Government expressed its readiness to participate in the exercise provided it did not imply financial support. Another welcomed an international exchange of experiences about the development of cooperatives and is prepared to provide detailed information on its national cooperative system. However, it considers that it is up to each individual country to create a supportive environment for the development of cooperatives. At most, therefore, United Nations guidelines could only use the international exchange of experiences to ascertain those factors which contribute to a positive development of cooperatives. One Government has not yet decided its position, because the guidelines are not in concrete shape at the moment. Some Governments, well known for their support to national and international cooperative development, have not answered the questionnaire.

61. Most of the cooperative organizations that responded to the questionnaire noted that they cannot specify the position of their Governments on elaborating United Nations guidelines aimed at creating a supporting environment for the development of cooperatives. However, many indicated that, based on current policy, they believe and hope and are even strongly convinced that their Governments would support and contribute to elaborating these guidelines.

*Notes*

[1] Established in 1971 as an inter-agency committee, the Committee for the Promotion and Advancement of Cooperatives is an ongoing partnership between three United Nations agencies and four international non-governmental organizations, representatives of the cooperative movement:

(a) United Nations;

(b) International Labour Office (ILO);

(c) Food and Agriculture Organization of the United Nations (FAO);

(d) International Cooperative Alliance (ICA);

(e) International Federation of Agricultural Producers (IFAP);

(f) International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF);

(g) World Council of Credit Unions (WOCCU).

It aims to promote and coordinate development initiatives through policy coordination, information exchange, advocacy and a variety of services.

[2] Governmental agencies from the following countries responded: Austria, Bahrain, Bangladesh, Bolivia, Bosnia and Herzegovina, Chile, Colombia, Cyprus, Estonia, Fiji, Finland, France, Germany, Ghana, Greece, Guinea, Iceland, Indonesia, Italy, Japan, Jordan, Kenya, Lithuania, Mauritius, Morocco, Netherlands, Portugal, Slovenia, Spain, Syrian Arab Republic, Thailand, United Republic of Tanzania, United States of America, Uruguay and Yugoslavia.

[3] Cooperative organizations that responded were from the following countries: Argentina, Armenia, Azerbaijan, Belgium, Bolivia, Bosnia and Herzegovina, Canada, Colombia, Costa Rica, Czech Republic, Denmark, Finland, France, Georgia, Hong Kong (China), Hungary, Japan, Malta, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Puerto Rico (United States of America), Republic of Korea, Republic of Moldova, Russian Federation, Senegal, Singapore, Slovenia, Slovakia, Spain, Sweden, Syrian Arab Republic, Thailand, Trinidad and Tobago, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America.

# Annex

## Guidelines aimed at creating a supportive environment for the development of cooperatives

### Draft submitted to the Secretary-General by the Committee for the Promotion and Advancement of Cooperatives

### Introduction

In its resolution 51/58 of 12 December 1996, the General Assembly requested the Secretary-General to ascertain, in cooperation with the Committee for the Promotion and Advancement of Cooperatives, the desirability and feasibility of elaborating United Nations guidelines aimed at creating a supportive environment for the development of cooperatives and to include his findings and recommendations in a report to be submitted to the General Assembly at its fifty-fourth session.

In response to that request, the Committee took up the matter at its fifty-sixth session, held at Geneva in November 1996. It decided in principle that such guidelines were highly desirable: the only existing guidance was provided by Cooperatives (Developing Countries) Recommendation No. 127, adopted on 21 June 1966 by the General Conference of the International Labour Organization. A meeting of experts on cooperatives was held at Geneva from 29 March to 2 April 1993 by the International Labour Organization. It concluded that, after nearly three decades of substantial change in global economic and social conditions in the cooperative movement and in the relations between it and Governments, there was need to change the tone and emphasis of the Recommendation to reassess the underlying concepts of aid to cooperatives and to include matters not addressed by it.

Moreover, in the view of the Committee, there was an urgent need for guidance to many Governments on policy regarding cooperatives and the cooperative movement in view of the importance of the movement, as agreed upon by them at the series of recent global conferences for new forms of collaboration and partnership with major stakeholders within society. New forms of relationships between Governments and the cooperative movement had been called for at a series of ministerial level meetings organized by the International Cooperative Alliance. The role and status of both Governments and the cooperative movement had changed drastically in formerly socialist countries and in many other developing countries. The international cooperative movement itself had comprehensively reviewed its values and principles and the nature of its proper relationship with other sections of society, including Governments, and had adopted a new "Statement on the Cooperative Identity" at the centennial congress of the International Cooperative Alliance in 1995.

In order to explore the feasibility of elaborating such guidelines, the Committee appointed a consultant to prepare a draft. A first version was reviewed and a second version examined at a consultative meeting attended by specialists from around the world, as well as by representatives of members of the Committee, at Geneva in May 1997. On the basis of extensive examination at that meeting, a third version of the draft guidelines was prepared.

The draft guidelines were circulated widely in print and electronic version. The electronic version of the guidelines was posted on the Committee for the Promotion and Advancement of Cooperatives Web site in January 1998. A printed version was also included in the International Day of Cooperatives press pack, which was mailed in July 1998 to over 2,000 organizations. The Committee also requested input from a number of cooperative organizations on an individual basis and briefed and provided copies of the guidelines at the International Cooperative Alliance meeting of chairpersons of the specialized bodies in March of 1998. No major comments to the guidelines were received by the Secretariat with the exception of a critical review by the Industrial Common Ownership Movement, which was circulated to members upon receipt. Other than this comment, there have been no negative reactions to the guidelines or any suggestions for improvements. Specific comments of approval were received from the International Cooperative Alliance Board, which reviewed and adopted the guidelines at their meeting in Tokyo in April 1998, and from the Federation of Danish Cooperatives. The representative of the International Labour Organization also reported that, despite the fact that the proposal for the revision of ILO Recommendation 127 was not accepted, the discussion of the item indicated that Governments in developing countries supported having a new standard on cooperatives, thus showing that there was a need for some sort of guidelines.

On the basis of the process of elaborating this draft, the Committee is able to advise the Secretary-General that it considers further elaboration of guidelines to be entirely feasible. During the process of wide circulation of the drafts of the guidelines by the Committee, the views expressed by specialists within the cooperative movement as well as in governmental and intergovernmental organizations is unanimously that such guidelines are desirable.

## Objectives

1. Within the General Assembly and the Economic and Social Council, and at major recent international conferences, Governments have acknowledged the significance of cooperatives as associations and enterprises through which citizens effectively overcome a wide range of problems and achieve many of their goals. They have recognized the cooperative movement as a distinct and major stakeholder in both national and international affairs.

2. Governments recognize that the cooperative movement is highly democratic, locally autonomous but internationally integrated, and a form of organization of associations and enterprises whereby citizens themselves rely on self-help and their own responsibility to meet goals that include not only economic but social and environmental objectives, such as overcoming poverty, securing productive employment and encouraging social integration.

3. Consequently, Governments seek to support the cooperative movement and to work closely with it to develop an effective partnership to achieve their respective goals. Policies setting out the objectives and means of support and collaboration are valuable instruments for ensuring that the potential of cooperatives for meeting the individual goals of citizens who are members, and through this the aspirations of the wider societies of which they are a part, is realized.

4. However, such policies can be effective only if they take into account the special character of cooperatives and the cooperative movement, which differs significantly from that of associations and enterprises not organized according to cooperative values and principles.

5. The objective of the present guidelines is to provide advice to Governments that is appropriate to contemporary and anticipated conditions. Because of the expectations shown by Governments in recent years regarding the cooperative movement and the rapidly changing global conditions and changes in the cooperative movement itself, many policies in most of the States Members of the United Nations might benefit from review, and in some cases from substantial revision. Given the relevance of cooperatives to many aspects of national life, as well as the special nature of cooperative organization, policy in respect to cooperatives may be complex and sensitive. It is the purpose of these guidelines to set out succinctly the principles on which national policy might best be based and the scope and content likely to suffice as a framework for the necessarily more specific and detailed national policies which fall within the responsibility of each Government.

## Policy regarding cooperatives and the cooperative movement

6. The objective of the policy is to ensure that cooperatives, recognized as legal entities, are assured real equality with other types of associations and enterprises, and that this equality is extended to all organizations and institutions set up by the cooperative movement. Enjoyment of such equality requires that the special values and principles of cooperative organization, expressed in the particular forms taken by cooperative organization, receive full recognition as being desirable and beneficial to society and that appropriate measures are taken to ensure that their special qualities and practices are not the cause of discrimination and disadvantage of any kind.

7. To achieve this objective, Governments are concerned with creating, and with maintaining as conditions change, a supportive and enabling environment for cooperative development. As part of such an environment, it is useful if every effort is made to create and maintain an effective partnership between Governments and the cooperative movement.

### A. Public recognition

8. It is appropriate and useful for Governments to acknowledge publicly the special contribution, in both quantitative and qualitative terms, made by the cooperative movement to the national economy and society. It is also beneficial for Governments to acknowledge and publicize the purposes of all forms of partnership and collaboration between themselves and the cooperative movement. A number of specific actions may be useful, one of which might be full participation in the annual joint observance of the United Nations International Day of Cooperatives and the International Cooperative Day organized by the International Cooperative Alliance, pursuant to General Assembly resolutions 47/90, 49/155 and 51/58; and appropriate participation in other celebrations of the cooperative movement.

### B. Legal, judicial and administrative provisions

9. Appropriate provision is necessary within legal, judicial and administrative practice if these most important areas of the environment in which cooperatives exist are to contribute positively to the supportive and enabling nature of that environment. Legal provisions may take various forms appropriate to individual national legal systems. The status, rights and responsibilities of cooperatives and the cooperative movement in general, as well as, if appropriate, those of special categories of cooperatives or of distinct aspects of cooperation should be addressed.

10. National constitutions: These instruments could acknowledge, if appropriate, the legitimacy of cooperatives and the cooperative movement and the utility of their contribution to national life.

11. General law on cooperatives or the general section of a single law on cooperatives: A general law on cooperatives could form the basic element in legal provisions and the fundamental point of guidance for all judicial and administrative practice. Participation by representatives of the cooperative movement in its formulation would be a valuable means to ensure its relevance and utility. It should acknowledge the nature of cooperation and its utility, set out criteria for treatment of cooperatives in law and define the nature of governmental responsibilities as well as the rights and responsibilities of the cooperative movement. It should include the following basic set of acknowledgments, definitions and provisions, certain of which might be set out in a preambular section: acknowledgment that the organization of associations and enterprises on the basis of cooperative values and principles is legitimate; acknowledgment of the utility of the cooperative approach to association and enterprise, its contribution to national life and the status of the cooperative movement as a significant stakeholder within society; definition of cooperatives, using the "Statement on the Cooperative Identity" adopted by the International Cooperative Alliance in 1995; recognition of the unique nature of the values and principles of cooperation, and hence the need for their separate and distinct treatment in law and practice; commitment that neither their unique nature nor their separate and distinct treatment in law and practice should be the cause of discrimination, intended or not; undertaking that no law or practice should restrict the rights of citizens to full participation in the cooperative movement in any capacity consistent with its values and principles and should not restrict the operation of that movement; provision that a general law apply to all categories of cooperatives but that, in order to respond to the situation of certain categories of cooperatives, special laws might be enacted, consistent with the general law; stipulation that all judicial and administrative regulations and practices be based only on the general or special laws on cooperatives; that all regulations clearly identify the provision of the law on which they are based and the purpose for which they are made; recognition of the full autonomy and capacity for self-regulation of the cooperative movement; acknowledgment that intervention by Governments in the internal affairs of the movement should be strictly limited to measures applied generally to all associations and enterprises equally in order to ensure their conformity with the law. Adjustments may be made only to ensure: real equality in treatment; definition of the responsibilities of the cooperative movement for self-regulation in all matters distinctive to it; provision that the texts of laws and regulations be made available to all cooperative members and employees; provision that representatives of the cooperative movement participate fully in drafting special laws or judicial or administrative regulations and guidelines concerning practice; provision for the maintenance of a public register of cooperatives as a part of procedures for registration of all associations and enterprises; provision for procedures for continuous monitoring and regular review of law and practice which would include the full and equal participation of representatives of the cooperative movement and for encouragement of research on the effect of law and practice on the environment for cooperatives; establishment of the responsibility of Governments to formulate and carry out a policy in respect to cooperatives that would seek to establish a supportive and enabling environment while avoiding any infringement of the autonomy of the movement and any diminution of its capacity for responsible self-regulation and would seek also to engage in an effective and equal partnership with the movement in all matters where it is able to contribute significantly to the formulation and carrying out of public policy; recognition of the value of governmental support for the international cooperative movement, including through intergovernmental activities; and definition of the responsibilities of the cooperative movement as a major stakeholder in society, to the extent these responsibilities are consistent with its full autonomy. These responsibilities include making available its experience in self-reliant, people-oriented and community-based organizations of associations and enterprises.

12. Special laws on certain categories of cooperatives: These must be consistent with the basic provisions set out in either a general law or in the preambular and initial sections of a single law where neither exists. Each special law should provide the same set of such basic provisions. They may be necessary when the distinctive nature of cooperatives requires special provision in law to safeguard

their autonomy while achieving their equal although distinctive inclusion in generally applicable regulations. This is often the case in respect to financial cooperatives.

13. Judicial and administrative practice concerned explicitly with cooperatives: These must be consistent with the general law on cooperatives and, specifically, with its provisions concerning such practice.

14. All other laws and practices insofar as they may have an effect on cooperatives: Many laws and judicial and administrative practices may affect the environment in which cooperatives operate, whether intentionally or not. Relevant governmental bodies should make every effort to exclude any discriminatory or prejudicial impact. Responsibility for identifying cases needing revision lies with the cooperative movement. Government bodies should assist by making available the full text of drafts of proposed laws or regulations as well as any evaluation of their impact.

15. Monitoring, review and revision of laws and judicial and administrative practices: This is necessary to ensure that the impact of laws and judicial and administrative practices on the cooperative movement is entirely positive. If identified, discriminatory provisions should be rendered inoperative as quickly as possible pending enactment of revised laws or the issuance of revised regulations and guidelines concerning practice. This process should have as its purpose the early and complete disengagement by Governments from the internal affairs of cooperatives and the cooperative movement, where this still exists, and full operational realization of the principles that cooperatives, although different, are equal to other business enterprises and civil associations.

16. For these purposes, formal procedures for consultation and collaboration should be set up and should include regular and full participation by the cooperative movement. Advantage may be taken also of the special programmes and guidelines offered by specialized international cooperative organizations and intergovernmental organizations.

### C. Research, statistics and information

17. Research: Given the significance of the cooperative movement, its own research and development programmes and the active role of Governments in supporting research generally, it is appropriate to undertake the following measures: recognition of the contribution of the cooperative movement itself, and hence disengagement from any direct intervention other than that applied to any recipient of public funding; provision for equal access as other types of associations, enterprises or movements to public funds; collaboration between governmental and cooperative movement research on matters relevant to public policy; publication and wide diffusion of research results, including those produced by the international cooperative movement, intergovernmental organizations and the United Nations. Emphasis should be on applied research of immediate utility in improving the efficiency of cooperatives, extending benefits to society and improving partnerships between the cooperative movement and Governments.

18. Statistics: Several measures may be undertaken to improve statistics for and about cooperatives: extend technical support provided by the national statistical service to the cooperative movement to an extent at least equal to that provided to other major stakeholders; assist in preparation of the annual report of the register of cooperatives; undertake preliminary studies on which to base integration of statistics on cooperatives in regular programmes of the national statistical service and participate in international efforts to improve cooperative statistics, including the establishment of a uniform set of definitions for use by national statistical services.

19. Information: Given that Governments regulate and broadly influence information diffusion, a number of measures may be useful in expanding knowledge of the cooperative movement and overcoming prejudices and misconceptions: extension of technical and financial assistance to an extent equal to that made available to other stakeholders; ensuring that no discrimination exists because of the distinctive nature of cooperatives; equal and non-discriminatory access by the cooperative movement to all public media commensurate with its contribution to national life; use of affirmative action to overcome prejudice and misinformation where the term cooperative is associated with a previous and inappropriate usage; diffusion through public media of material on intergovernmental activities undertaken in partnership with or in support of cooperatives; dissemination of printed and computer-based information prepared by governmental or intergovernmental bodies with the same priority and resources as allocated to information on other stakeholders.

### D. Education

20. Given the important contributions of the cooperative movement to education, a number of supportive and enabling measures might be useful: acknowledgment of the contributions made; commitment to non-interference in the movement's own programmes other than those generally applied in order to maintain standards in all educational institutions; avoidance of discrimination in certification and accreditation; support for all forms of collaboration and

partnership between cooperative and public systems and assurance of equality with other types of private education (where this exists) in respect to eligibility for public funds; consideration of the option constituted by cooperative organization in programmes of privatization; encouragement of self-reliance among students by facilitating the formation of cooperatives to supply them with goods and services, including accommodation; encouragement of formation by public educational institutions of purchasing, supply and common service cooperatives; assurance of equal access by cooperatives with other suppliers, inclusion within the national curricula at all levels of the study of the values principles, history, current and potential contribution of the cooperative movement to national society; and encouragement and support of specialized studies in cooperatives at the tertiary level.

### E. Provision of public funds

21. Financial self-reliance, total responsibility and full independence are vital for an effective cooperative enterprise. The best policy approach is one where cooperatives receive the same treatment as any other form of enterprise. A number of other measures are valuable: acknowledgement and protection of the special character of cooperatives and avoidance in law or practice of any discrimination arising from the special financial status, organization and management of cooperatives; avoidance of any direct or indirect engagement in the internal financial affairs of cooperatives or of the cooperative movement and recognition of the full responsibility of the movement for its own financial affairs; and the development of partnerships with cooperative financial institutions in such matters as community and regional development, drawing on their experience of mobilizing and managing capital in a manner and for purposes conducive to the public good.

### F. Institutional arrangements for collaboration and partnership

22. Many governmental departments and bodies will have contact with the cooperative movement, while a policy of enabling and supporting cooperatives and operating an effective partnership with the movement will involve actions by a wide range of governmental institutions. In order to ensure consistency with broad general policy, certain coordinating functions within government, as well as liaison with the cooperative movement, will be useful.

23. It is advisable that a single department or office assume central coordinating, focal and liaison functions, of which the following might be most important: elaboration of a single national comprehensive policy in respect of cooperatives, formulation of guidelines for consistent execution throughout government, including monitoring and review of that execution; collaboration with legal departments in drafting the general and any special laws; and liaison, consultation and collaboration with the cooperative movement.

24. The most effective organizational location for the responsible entity would be within a department already charged with broad strategic and coordinating functions, such as the office of a prime minister or president, or that responsible for economic management of development planning.

25. An institutional arrangement appropriate to specific national conditions, which would permit effective collaboration between Governments and the cooperative, movement would be valuable.

26. Liaison between intergovernmental programmes and the international cooperative movement should be supported, including, in particular, that achieved through the Committee for the Promotion and Advancement of Cooperatives.